

DOCUMENT RESUME

02396 - [A1592573]

[Reconsideration of Prior Decision Regarding Sole Source Awards]. B-187624. June 1, 1977. 3 pp.

Decision re: Consolidated Elevator Co.; by Elmer B. Staats, Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law II.  
Budget Function: General Government: Other General Government (806).

Organization Concerned: Smithsonian Institution.

Authority: F.P.R. 1-1.314. B-187624 (1977). B-187177 (1977).  
B-186313 (1976). B-187569 (1977). B-186568 (1976). 55 Comp. Gen. 802. 55 Comp. Gen. 1412. 54 Comp. Gen. 1021.

A reconsideration was requested of a prior decision concerning bidder's protest of sole source awards to four firms. Prior decision concluded that sole source awards were unjustified, and recommended termination of contracts and resolicitation if to the Government's advantage. Prior decision was affirmed. Argument that such action violates F.P.R. 1-1.314 was rejected. (Author/DJM)



**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

FILE: B-187624

DATE: June 1, 1977

MATTER OF: Consolidated Elevator Company, Inc. --  
Reconsideration

**DIGEST:**

Where initial decision concluded at sole source awards were made with insufficient justification and recommended conduct of a competitive procurement and subsequent termination of existing contracts if termination found to be more advantageous to the Government, prior decision is affirmed and agency's argument that such action is in violation of FPR 1-1.314 is rejected.

The Smithsonian Institution has requested reconsideration of our decision concerning the protest of Consolidated Elevator Company, Inc., B-187624, March 24, 1977, 56 Comp. Gen. \_\_\_, 77-1 CPD 210.

Consolidated had protested the award of sole source maintenance and repair contracts by the Smithsonian Institution to four firms, contending that the Smithsonian Institution had insufficient justification for concluding that those four firms were the only ones capable of maintaining the agency's elevators, escalators and dumbwaiters.

After careful scrutiny of the record, we concluded that none of the facts and circumstances offered by the Smithsonian constituted sufficient justification for the noncompetitive awards. Accordingly, we recommended that that agency:

(1) re-evaluate its minimum needs in light of our decision and the preference for competitive procurement;

(2) at such time as practicable, and if appropriate, hold a competitive procurement for the services in question; and

(3) after such procurement process has been executed, terminate the existing contracts for the convenience of the Government if award under the competitive procurement would be more advantageous to the Government.

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While advising that it has already begun to implement the foregoing recommendation, the Smithsonian suggests that implementing the latter two recommendations might violate Federal Procurement Regulations (FPR) 1-1.314. That provision states that it is the general policy of the Government to solicit offers only where there is a definite intent to award a contract, but allows for requests for informational or planning purposes when the request clearly states that the Government does not intend to award a contract on the basis of the request or otherwise pay for the information solicited. The Smithsonian argues that compliance with our second recommendation would "violate the policy of FPR 1-1.314" since the "Smithsonian will have no intention to award a contract" because the solicitation "is in actuality merely a part of the reevaluation process recommended in step one."

Smithsonian suggests that rather than issuing such a solicitation, it refrain from exercising follow-on options available under current contracts which terminate at the end of the present fiscal year, and then decide whether a competitive procurement can be effected for the services, with an advance decision requested from this Office as to the propriety of any proposed noncompetitive award.

The Smithsonian apparently misconstrues the import and objective of our recommendations. Because we viewed the noncompetitive awards as improper and subject to corrective action, we recommended that, subject to the tests of practicability and appropriateness, a competitive procurement be conducted. That recommendation was made with the expectation that award or awards would ensue therefrom. It is only if the contracts that would result from acceptance of offers received in response to the procurement would not be more advantageous to the Government than the existing contracts that award need not be made. We see nothing in this approach, which we have recommended in other cases to preclude a possible needless termination for convenience, see Informatics et al., B-187177, March 1, 1977, 56 Comp. Gen. \_\_\_\_, 77-1 CPD 152; see also Burroughs Corporation, B-186313, December 9, 1976, 56 Comp. Gen. \_\_\_\_, 76-2 CPD 472; Union Carbide Corporation, 55 Comp. Gen. 802 (1976), 76-1 CPD 134, which was inconsistent with FPR 1-1.314. Even if we were to agree that the issuance of a solicitation under these circumstances could be regarded as for informational purposes, FPR 1-1.314 would require only that the solicitation clearly explain the Government's intention. Accordingly, our prior recommendations are affirmed.

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With regard to the Smithsonian's suggestion concerning the non-exercise of options, we point out that our recommendation was to hold a competitive procurement if "practicable" and "appropriate". The time remaining under the existing contracts, and the length of time it would take to conduct a new procurement, may of course be considered in determining the practicability of soliciting new offers at this time since we have always regarded extent of performance under existing contracts as one factor bearing on whether contract termination would be appropriate. Society Brand, Inc. - Request for Reconsideration, 55 Comp. Gen. 1412 (1976), 76-2 CPD 202; ABC Cleaning Service, Inc., B-187569, February 4, 1977, 77-1 CPD 91; Abbott Power Corporation, B-186568, December 21, 1976, 76-2 CPD 509.

We note that the Smithsonian interprets FPR 1-1.314 as requiring the award of "bid preparation costs" in the case of informational solicitations. That section, however, only references FPR 1-15.205-3, which pertains to accounting requirements and the allowability and allocation of the costs of preparing bids or proposals on potential Government and non-Government projects over a specific accounting period. It has no relevance to proposal preparation expenses, which may be awarded to a particular contractor whose proposal was not evaluated fairly or in good faith. See T & H Company, 54 Comp. Gen. 1021 (1975), 75-1 CPD 345.

  
Comptroller General  
of the United States